

Alaska Oil and Gas Association



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Joshua M. Kindred, Regulatory & Legal Affairs Manager

October 14, 2013

Via Electronic and First Class Mail

Chris Foley
Alaska Department of Environmental Conservation
Division of Water, Wastewater Discharge Authorization Program
555 Cordova Street
Anchorage, AK 99501

Re: Comments on Draft APDES Preliminary General Permit for Geotechnical Facilities in State Waters in the Arctic Ocean (AKG2831000)

Dear Mr. Foley:

Thank you for the opportunity to comment on the Alaska Department of Environmental Conservation's ("ADEC") issuance of an Alaska Pollutant Discharge Elimination System ("APDES") General Permit for Geotechnical Facilities in State Waters in the Arctic Ocean ("Draft Geotechnical Permit"). The 15 members of the Alaska Oil and Gas Association ("AOGA") account for the majority of oil and gas exploration, development, production, transportation, and refining activities onshore and offshore in Alaska.

During the course of our review of the Draft Geotechnical Permit, AOGA has identified several key issues that we hope your agency will consider modifying in advance of the publication of this document. The comments set forth in this letter address these key issues. However, given the limited time allotted for the applicant preliminary review, these comments do not comprehensively address all the concerns that AOGA and its members have with respect to the permit. In an effort to address our issues in the most efficient manner possible, AOGA would ask that ADEC hold a workshop with the applicant in the next week. During that workshop, AOGA would be able to present additional technical and scientific information in support of these comments.

Environmental Monitoring Plan (AKG283 Section 3.3)

AOGA suggests that the ADEC modify the Draft Geotechnical Permit's Environmental Monitoring Plan ("EMP") so that it is more appropriately tailored to geotechnical boring—as

opposed to exploration drilling—activities. As noted in your Preliminary Fact Sheet, “there are a number of very significant differences between oil & gas exploratory drilling and relatively shallow geotechnical rotary drilling. (See Preliminary Fact Sheet, p. 25) Given these significant differences, and the extremely low potential for environmental impacts from geotechnical borings, AOGA requests that the EMP be modified in the manner set forth in Attachment 1.

AOGA recognizes the ADEC’s desire to accumulate further data to substantiate that industry activity will not result in unreasonable degradation of sensitive areas and communities. The revisions suggested in Attachment 1 moderate the EMP so that it addresses the ADEC’s concerns while also being better scaled to the level of potential impacts from geotechnical activities. For boreholes less than 300 feet deep, AOGA suggests that the EMP consist of a visual survey of the borehole site to be conducted both before and after boring. For boreholes between 300 and 499 feet, AOGA recommends that in addition to a visual survey, applicants be required either to conduct a seabed characterization after boring or provide ADEC with information or modeling that predicts the extent of any significant physical disturbance to the seafloor.

AOGA believes the current EMP requirements pertaining to water column sampling should be removed from the permit. These requirements are not substantiated in the Ocean Discharge Criteria Evaluation (“ODCE”), nor are they warranted by the types of discharges associated with geotechnical activities. Additionally, this requirement would unnecessarily impose severe operational restraints on permittees as geotechnical vessels are not normally outfitted with the necessary labs and equipment to obtain this type of sample.

Monitoring Requirements (AKG283 Section 2.2.8)

AOGA suggests that the monitoring requirements for a “discharged fluid system for boreholes deeper than 300 feet” be modified so that they only apply if drilling mud constituents and additives could potentially introduce the chemicals and heavy metals listed in Section 2.2.7 and Table A of Section 3.3.4.3.4. AOGA would also recommend that an operator be permitted to provide pre-drill chemical analyses of all drill mud constituents and a record of each drill mud constituent used for each borehole, rather than requiring post-drill sampling for the presence of these chemicals and metals. These analyses and records can be used to account for any chemicals or metals that are potentially introduced into an area. There would be no added value to test the seabed for the listed chemicals and metals, especially given that these drilling mud constituents are relied on primarily for exploratory drilling and not geotechnical boring.

Discharge Restrictions

AOGA suggests that restrictions in proposed General Permit AKG283 relating to discharges of drilling fluids in cuttings, including discharge rates, be removed from the final permit. These discharge rates are not supported by impact analyses in the ODCE and would impose substantial operational restrictions, particularly in shallow waters.

Activity Levels

AOGA suggests that the ADEC modify its assumptions relating to activity levels that will occur under the Draft Geotechnical Permit in a manner that more accurately reflects foreseeable activity in the planning region. The ADEC has assumed that 50% of the boreholes projected in the coordinated industry response would be drilled in state waters. The ADEC states explicitly that “it believes such a split is unlikely, and as a result, [it] is likely overstating both the level of activity and possible effects.” (See Preliminary Fact Sheet, p. 25) While AOGA appreciates that it is prudent for the ADEC to be reasonably conservative in its activity level estimates, the 50% multiplier drastically overstates the level of boreholes that it is currently believed will be drilled during the life of this permit. Between limitations on available assets and the short working season, it is not foreseeable that 136 boreholes will be drilled in a single year, for almost each year during the life of this permit. For this reason, AOGA requests that ADEC adjust the 50% multiplier appropriately and, thus, more accurately capture anticipated future activity levels and avoid overstating potential impacts.

Furthermore, AOGA recommends that the ADEC consider evaluating geotechnical activity levels in terms of linear feet of borehole drilled as opposed to the “per borehole” approach that it has taken with respect to this permit. In an average season, it is currently estimated that most operators will be unable to drill more than 1,500 to 2,000 linear feet of boreholes in the State waters.

Subsistence Whaling Closures

AOGA suggests that the ADEC remove from the Draft Geotechnical Permit *all* prohibitions relating to subsistence whaling activities.

As drafted, the proposed permit includes two provisions that prohibit the release of Discharge 001 discharges during periods of whaling activity in the Beaufort and Chukchi Seas. For the Beaufort Sea, Section 1.4.10 provides that “permittees must cease Discharge 001 discharges starting on August 25, and may not resume discharging until after whaling activities are completed, as determined by coordination with the respective Whaling Captains Associations.” Similarly, for the Chukchi Sea, Section 1.4.11 of the permit “prohibits any Discharge 001 discharges during the Chukchi Sea beluga whaling season beginning approximately June 20 or as established by coordination with the respective Whaling Captains Associations.”

There is no support for the inclusion of either of these subsistence provisions in the Clean Water Act (CWA) or the ODCE that was prepared to assess potential impacts from the activities related to the Draft Geotechnical Permit. Pursuant to the Section 403(c) of the CWA, adopted by reference at Alaska Administrative Code (AAC) 18 AAC 83.010, APDES permits for discharges into territorial seas must comply with EPA’s Ocean Discharge Criteria. The ODCE prepared for the ADEC for this proposed permit concludes that the discharges evaluated will not cause “unreasonable degradation of the marine environment under the conditions, limitations, and requirements in the Geotech GP.” (ODCE, p. 116) Furthermore, the subsistence provisions in

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the permit appear to be untethered from any of the ten criteria that ADEC is to consider in the ODCE in order to make an “unreasonable degradation” determination. (See 40 CFR 125.122).

In fact, the ODCE states that effects from the permitted activities are “*unlikely to have direct impacts to whales and pinniped species due to limited extent of the affected area compared to the area utilized by these species, as well as the short-term extent that any whale or pinniped species could be exposed (as they would at most, be passing through an affected area[.] (ODCE p. 99) (Emphasis added.)* While the ODCE continues on to state that there “*could be indirect impacts to these species due to their prey species[.]*” the reference for these statements is the ODCE that EPA prepared for Oil and Gas *Exploration* Facilities on the Outer Continental Shelf and Contiguous State Waters in the Beaufort Sea, Alaska (NPDES Permit No.: AKG-28-2100). As acknowledged by ADEC in its Preliminary Draft Fact Sheet, there are significant differences between exploratory and geotechnical drilling, including average discharge volumes, which may account for why a prohibition appears in the recently issued *Exploration* General Permit for the Beaufort Sea (AKG-28-2100), but would not be applicable here. Given the differences between exploratory and geotechnical drilling, there is no basis upon which to assert that there will be indirect impacts to whales, or subsistence users, from the permitted activities.

AOGA believes that the ADEC should refrain from including the subsistence provisions in the proposed permit because it is the responsibility of the U.S. Fish & Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), rather than the ADEC, to mitigate any potential impacts to subsistence activities. Historically, these agencies have been successful in mitigating impacts to subsistence users through the implementation of their regulations and programs. AOGA acknowledges that one or more of its members may select to enter into voluntary agreements with subsistence organizations that include limitations on activities during seasonal whale hunts. However, these agreements are private contracts that are not enforceable under the CWA and should not be relied upon as the basis for broad based permit restrictions. Furthermore, language in the Draft Geotechnical Permit represents a greater restriction than those contemplated by the recent Conflict Avoidance Agreements (CAA) entered into by industry. The 2012 CAA executed between Shell and the Alaska Eskimo Whaling Commission required the closure of only designated portions of the Beaufort Sea and not the entire Sea, which this permit requires. Additionally, to date, no CAAs have required closures for whaling in the Chukchi Sea and, as stated below, no similar closures are required in the EPA’s Chukchi Sea General Permit, despite that exploration activities result in greater discharge volumes than do geotechnical activities.

Finally, the ADEC should consider the substantial impact that these subsistence provisions will have on industry if they are carried forward to the final permit. These closures will substantially affect the ability of operators to conduct the investigations necessary to proceed with development in the Arctic. The majority of geotechnical investigations that will be conducted under this proposed permit will occur during the open water season, which is already extremely limited. These subsistence provisions will result in a substantial reduction in the operational period during which these investigations can occur, particularly in the Chukchi Sea where beluga whaling may remain ongoing over a period of weeks, and similar prohibitions do not even appear

in the recently issued EPA *Exploration* Permit for the Chukchi Sea (AKG-28-8100). The ADEC should not constrict the operational window for geotechnical vessels without evidence that these subsistence provisions are necessary to prevent “undue degradation” to the marine environment.

Latitude/Longitude of Boreholes

AOGA would request the removal of the Draft Geotechnical Permit requirements that permittees submit the latitude and longitude of all planned boreholes. These requirements, as set forth in Sections 1.2.1.4 and 1.2.5, are extremely operationally restrictive, especially insofar as they require a permittee to give the ADEC 30 days’ notice of proposed location changes. These requirements do not account for the fact that field conditions, e.g. ice, may preclude boring at certain locations. Additionally, the requirements do not account for the fact that permittees may need to conduct in-field adjustments based on real-time results, or a refusal at a location due to subsurface resistance (i.e. boulders).

The requirement that a permittee include in its NOI the longitude and latitude of its planned boreholes should also be removed. Pursuant to 18 AAC 83.165 a party may submit this type of information to ADEC under a claim of confidentiality. However, this claim cannot be made if the information sought to be protected is required to be included on an ADEC application form. By requiring this information to be included on the NOI form, ADEC has effectively prevented permittees from raising confidentiality claims related to it.

Definitions & Clarification

Finally, AOGA would request clarification as to the definition of a number of terms used in the Draft Geotechnical Permit. These terms include (1) “discharge,” as used in Sections 1.4.7, 1.4.9 and 1.4.12; (2) “coastal waters” as used in Section 1.4.8; (3) “facilities”; and (4) “water based” as used in reference to drilling fluids. With regard to the last item, AOGA seeks clarification as to whether “water based” is in reference to potable water, sea water, or either type of water. This list is not all inclusive, but merely some examples of areas where AOGA hopes to receive more clarification and guidance.

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Thank you again for the opportunity to comment and engage in further discourse in an attempt to address our mutual concerns. We appreciate and are encouraged by the ADEC's willingness to engage in this process. AOGA's members have a long history of partnership with state and federal agencies to help ensure that oil and gas operations do not adversely impact the environment in which we live and work, and we look forward to continuing this productive relationship into the future.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. Kindred', with a large, stylized initial 'J' and a long horizontal flourish extending to the right.

Joshua M. Kindred
Regulatory and Legal Affairs Manager